

Message Text

UNCLASSIFIED

PAGE 01 STATE 226683

70

ORIGIN EB-06

INFO OCT-01 EA-06 ISO-00 INRE-00 NSCE-00 SSO-00 JUSE-00

CAB-02 CIAE-00 COME-00 DODE-00 DOTE-00 INR-05 NSAE-00

RSC-01 FAA-00 L-01 NSC-05 SS-15 /042 R

DRAFTED BY EB/AN:WBCOBB:TP

APPROVED BY EB/AN:MHSTYLES

CAB - MR. BROWNE

EA/PHL - MR. WILLNER

----- 000475

O 152146Z OCT 74

FM SECSTATE WASHDC

TO AMEMBASSY MANILA IMMEDIATE

UNCLAS STATE 226683

E.O. 11652: N/A

TAGS: EAIR, RP

SUBJECT: CIVAIR - PAL SEIZURE CASE

1. PAL HAS FILED MOTION TO DISMISS AND ALTERNATELY FOR SUMMARY JUDGMENT IN THE CASE OF THE US VS PAL IN US DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA (SAN FRANCISCO). IN SUPPORT OF ITS CASE PAL'S ATTORNEYS HAVE SUBMITTED AN AFFIDAVIT FROM RAFAEL IGOA, EXECUTIVE VICE PRESIDENT, PAL WHICH INCLUDES REPRESENTATIONS, SOME OF WHICH MAY BE UNTRUE, MISLEADING OR INCOMPLETE, OF STATEMENTS ALLEGEDLY MADE TO IGOA BY TERRELL ARNOLD. THRUST OF IGOA'S REPRESENTATIONS, IF LEFT UNCHALLENGED, MAY LEAD DISTRICT COURT TO CONCLUDE AN AGENT OF THE US LED PAL TO BELIEVE IT COULD LEGALLY OPERATE THE DC-10 TO THE US ON JULY 24, 1974.

2. IN SUMMARY, AFFIDAVIT ALLEGES ARNOLD AND IGOA DISCUSSED SUBSTANCE INTERIM AGREEMENT JULY 17 BASED ON TEXT ARNOLD-MABILANGAN LETTER JULY 16. ARNOLD REPORTEDLY INDICATED AGREEMENT IN PRINCIPLE WITH OBJECTIVES OF PAL
UNCLASSIFIED

UNCLASSIFIED

PAGE 02 STATE 226683

COUNTER PROPOSALS. AT SUBSEQUENT MEETING JULY 18 EFFORTS

TO CLARIFY DIFFERING VIEW POINTS WERE MADE AND WHEN IGOA DIRECTLY ASKED ARNOLD IF DC-10 FLIGHT ON JULY 18 COULD PROCEED ARNOLD REPLIED HE WAS NOT SAYING ANYTHING OR MAKING ANY STATEMENT THAT WOULD PREVENT AUTHORIZATION BEING GIVEN FOR FLIGHT TO DEPART THAT AFTERNOON. SINCE NO

AGREEMENT WAS REACHED ON TEXT PROPOSED EMBASSY NOTE INCORPORATING PROVISIONAL ARRANGEMENTS, DISCUSSIONS CONTINUED ON JULY 19 AT WHICH TIME PI CAB DIRECTOR AGCAOILI AGREED ALLOW NORTHWEST TO SUBSTITUTE B-747 FOR 707'S ONLY FOR SO LONG AS PAL'S DC-10 FLIGHTS AUTHORIZED BY US CAB.

3. AFFIDAVIT STATES THAT ON JULY 20 AT DISCUSSIONS IN HOME AMBASSADOR MABILANGAN, ARNOLD TERMINATED DISCUSSIONS AND INDICATED HE WOULD RECOMMEND DISCONTINUANCE OF PAL'S PROVISIONAL PERMIT FOR DC-10 FLIGHTS UNLESS BASIS FOR CONTINUING DISCUSSIONS COULD BE GIVEN. LATER THAT DAY ARNOLD ADVISED MABILANGAN DISCUSSIONS COULD CONTINUE.

4. IGOA STATES IN AFFIDAVIT HE LEARNED FROM HIS WASHINGTON ATTORNEYS JULY 19 THAT PAL'S AUTHORITY OPERATE DC-10'S EXPIRED JULY 19 AT MIDNIGHT AND THAT PROPOSED OPERATIONS JULY 20 NOT APPROVED. HE SAYS HE IMMEDIATELY PHONED ARNOLD TO INQUIRE WHETHER NEW PROBLEMS HAD ARISEN AND WAS ASSURED THERE WAS NO NEW PROBLEM AND THAT THE US WOULD NOT ASK FOR ADDITIONAL CARGO CAPACITY IN THE DOCUMENT. IGOA STATES HE RECEIVED TELEX FROM HIS ATTORNEYS ADVISING CAB HAD AUTHORIZED DC-10 FLIGHT JULY 20 AND THAT FURTHER DC-10 OPERATIONS WOULD BE APPROVED ON A CASE BY CASE BASIS DEPENDING ON PROGRESS NEGOTIATIONS.

5. IGOA ALLEGES THAT HAVING BEEN ASSURED BY ARNOLD THERE WAS NO NEW PROBLEM AND ON BASIS REPEATED REPRESENTATIONS MADE BY ARNOLD THAT PROPOSED WORDING WOULD NOT CHANGE SUBSTANCE OF UNDERSTANDING REACHED EARLIER, HE AUTHORIZED PAL OPERATE DC-10 JULY 22 WHICH WAS APPROVED BY CAB ORDER 74-7-96 AFTER FLIGHT DEPARTED MANILA.

UNCLASSIFIED

UNCLASSIFIED

PAGE 03 STATE 226683

6. IGOA ASSERTS THAT AFTER FULL DAY OF NEGOTIATIONS JULY 22 WITH ASSISTANCE DOSCH OF NORTHWEST, AGCAOILI, AND ATTORNEY GOZON OF PAL, AGREEMENT ON WORDING FINALLY REACHED AT 9:30 PM WITH ARNOLD. ARNOLD ADVISED IGOA AT MIDNIGHT JULY 22 THAT WORDING NOT ACCEPTABLE USG, AND THAT SOME WORDING CONCERNING US ALL CARGO OPERATIONS WOULD HAVE TO BE INCORPORATED IN AGREED TEXT. IN TELEPHONE DISCUSSIONS JULY 23 AND 24 ARNOLD REPORTEDLY TOLD

AMBASSADOR MABILANGAN THAT PROPOSED CHANGES IN NOTE WOULD NOT SUBSTANTIALLY CHANGE POINTS ALREADY AGREED UPON, AND THAT WASHINGTON ONLY WANTED TO PUT IN SOME WORDS CONCERNING US ALL CARGO OPERATIONS.

7. IGOA ALLEGES THAT BECAUSE OF REPRESENTATIONS MADE BY ARNOLD AND DOSCH THAT PROPOSED CHANGES IN AGREED DRAFT

NOTE OF JULY 22 WERE NOT SUBSTANTIAL, AND CONSIDERING THAT ARNOLD, WHO HAD DIRECT AND PERSONAL CONTACT WITH HIM, HAD NOT ADVISED HIM IN ANY WAY THAT DC-10 FLIGHT ON JULY 24 WAS NO LONGER AUTHORIZED, AND CONSIDERING THAT NORTHWEST RECIPROCAL 747 FLIGHT WAS ARRIVING JULY 24 AND DEPARTING JULY 25 HE HAD NO REASON OR BASIS TO BELIEVE OR EVEN BE APPREHENSIVE THAT JULY 24 DC-10 FLIGHT NOT AUTHORIZED. FURTHER HE CONCLUDED ABRUPT CANCELLATION WOULD BE IMPRACTICAL AND ILLOGICAL SINCE IT WOULD CAUSE CANCELLATION NORTHWEST'S NEW SERVICES.

8. IN ORDER REBUT IGOA'S REPRESENTATIONS NEED BY COB THURSDAY, OCTOBER 17 ARNOLD'S RESPONSE TO FOLLOWING QUESTIONS. REPLY SHOULD BE SENT TELEGRAPHICALLY TO US ATTORNEY SAN FRANCISCO, ATTENTION RICHARD LOCKE AND ALSO INFO DEPARTMENT. RESPONSE SHOULD BE REDUCED TO AFFIDAVIT FORM AND AFFIDAVIT TRANSMITTED DIRECT TO US ATTORNEY VIA AIR MAIL. QUESTIONS FOLLOW:

A. DID ARNOLD MEET WITH IGOA OF PAL ON OR ABOUT JULY 16/17 AND DID IGOA ADVISE ARNOLD THAT THE PHILIPPINE GOVERNMENT WOULD NOT RENEW THE OPERATING AUTHORITY OF FLYING TIGER AFTER OCTOBER 10, 1974?

B. DID ARNOLD AGREE "IN PRINCIPLE WITH THE OBJECTIVES"
UNCLASSIFIED

UNCLASSIFIED

PAGE 04 STATE 226683

OF PAL'S COUNTER PROPOSAL OF JULY 17, 1974, TO THE US PROPOSAL OF JULY 16, 1974? IF SO, DID ARNOLD AGREE TO DRAFT AN AGREEMENT, IN DIPLOMATIC LANGUAGE, INCORPORATING THE CHANGES IN THE PAL COUNTER PROPOSAL?

C. DID IGOA ASK ARNOLD AT APPROXIMATELY 4:00 PM ON JULY 17, 1974, WHETHER PAL DC-10 AIRCRAFT, SCHEDULED TO DEPART AT 6:00 PM, WOULD PROCEED TO HONOLULU AND SAN FRANCISCO? IF SO, DID ARNOLD REPLY THAT HE WOULD NOT SAY ANYTHING TO PREVENT IGOA FROM ALLOWING THE FLIGHT TO DEPART THAT AFTERNOON?

D. DID ARNOLD ACCOMPANY IGOA TO THE AIRPORT IN MANILA ON JULY 17, 1974, TO OBSERVE THE DEPARTURE OF PAL DC-10 AIRCRAFT SCHEDULED TO DEPART AT 6:00 PM? IF SO, DID

ARNOLD EXPRESS HIS INTEREST IN SEEING THE DC-10 DEPART?

E. DID ARNOLD AGREE, ON OR ABOUT JULY 19, 1974 WITH REPRESENTATIVES OF THE PHILIPPINE GOVERNMENT, THAT NORTHWEST SHOULD BE PERMITTED TO INCREASE CAPACITY INTO MANILA "IN VIEW OF THE PROVISIONAL AUTHORIZATION OF PAL DC-10 FLIGHTS INTO THE UNITED STATES?" IF SO, WAS THIS AGREEMENT CONVEYED TO MR. DOSCH OF NORTHWEST?

F. DID ARNOLD, ON OR ABOUT JULY 20, 1974, FIRST TERMINATE AND LATER RENEW CAPACITY DISCUSSIONS WITH REPRESENTATIVES OF THE PHILIPPINE GOVERNMENT OR PAL? IF SO, DID ARNOLD THEREAFTER ADVISE IGOA THAT THERE WAS "NO NEW PROBLEM" INVOLVING SUCH DISCUSSIONS?

G. DID ARNOLD AGREE, ON OR ABOUT JULY 22, 1974, UPON THE WORDING OF A DRAFT US EMBASSY NOTE RELATING TO CAPACITY LIMITATIONS? IF SO, DID ARNOLD THEREAFTER ADVISE IGOA THAT THE WORDING OF THE DRAFT WAS NOT ACCEPTABLE TO WASHINGTON? IF SO, DID ARNOLD THEREAFTER ASSURE ANY REPRESENTATIVE OF THE PHILIPPINE GOVERNMENT OR PAL THAT CHANGES REQUIRED BY WASHINGTON WERE WORDING CHANGES RELATED SOLELY TO CARGO AND WOULD NOT "SUBSTANTIALLY CHANGE THE POINTS ALREADY AGREED UPON?"

H. DID ARNOLD EVER AFFIRMATIVELY ADVISE ANY REPRESENT-
UNCLASSIFIED

UNCLASSIFIED

PAGE 05 STATE 226683

ATIVE OF THE PHILIPPINE GOVERNMENT OR PAL THAT PAL HAD AUTHORITY FROM THE UNITED STATES TO OPERATE DC-10 AIRCRAFT OVER A MANILA-HONOLULU-SAN FRANCISCO ROUTING ON JULY 17, 1974? ON JULY 22, 1974? ON JULY 24, 1974? WITH RESPECT TO EACH FLIGHT FOR WHICH THE RESPONSE IS AFFIRMATIVE, PROVIDE THE BASIS FOR SUCH REPRESENTATION AND THE TIME, PLACE AND CIRCUMSTANCES SURROUNDING IT, AS WELL AS THE PERSON TO WHOM SUCH REPRESENTATION WAS MADE.

9. DEPARTMENT POUCHING ARNOLD COPY IGOA AFFIDAVIT. SINCE AFFIDAVIT PRESUMABLY DOES NOT PROVIDE COMPLETE RECORD OF ARNOLD-IGOA CONVERSATIONS, ARNOLD MAY WISH TO FORWARD US ATTORNEY ADDITIONAL AFFIDAVIT THIS SUBJECT, PARTICULARLY IN REFERENCE STATEMENTS TO IGOA OR OTHER PAL OR PHILIPPINE OFFICIALS REGARDING AUTHORIZATION FOR JULY 24 FLIGHT. SUMMARY SUCH AFFIDAVIT MAY BE INCLUDED IN TELEGRAPHIC RESPONSE. US ATTORNEY WOULD WELCOME ANY ADDITIONAL INFO ARNOLD CAN PROVIDE.
INGERSOLL

UNCLASSIFIED

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: LITIGATION, CIVIL AVIATION
Control Number: n/a
Copy: SINGLE
Draft Date: 15 OCT 1974
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Authority: n/a
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 JAN 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1974STATE226683
Document Source: CORE
Document Unique ID: 00
Drafter: WBCOBB:TP
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D740293-0296
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1974/newtext/t19741046/aaaabnec.tel
Line Count: 221
Locator: TEXT ON-LINE, ON MICROFILM
Office: ORIGIN EB
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators:
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: martinjw
Review Comment: n/a
Review Content Flags:
Review Date: 04 MAR 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <04 MAR 2002 by chappeld>; APPROVED <06 FEB 2003 by martinjw>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: CIVAIR - PAL SEIZURE CASE
TAGS: EAIR, RP, US, PAL
To: MANILA
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005